

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**MIRIAN PADILLA** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830187  
York State Personal Income Tax under Article 22 of the :  
Tax Law for the Year 2018. :

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Petitioner, Mirian Padilla, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2018.

A videoconferencing hearing via CISCO Webex was held before Donna M. Gardiner, Administrative Law Judge, on July 27, 2022, with the final brief to be submitted by December 16, 2022, which date commenced the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

***ISSUE***

Whether petitioner has established that the Division of Taxation erred in disallowing her claimed earned income credit and Empire State child credit for the year 2018.

***FINDINGS OF FACT***

1. Petitioner, Mirian Padilla, filed a New York State resident income tax return, form IT-201, for the year 2018, reporting two dependent exemptions, business income of \$15,405.00, and requesting a refund in the amount of \$1,950.00. The refund consisted of a New York State

earned income credit in the amount of \$1,670.00 and an Empire State child credit in the amount of \$280.00.

2. Attached to petitioner's return was a schedule C, Profit or Loss from Business, reporting her business as a housekeeper, reporting gross receipts and net profit in the amount of \$16,005.00, and business expenses in the amount of \$600.00. The schedule C lists her home address as her business address.

3. Also attached to petitioner's return were forms IT-215, claim for earned income credit, and IT-213, claim for Empire State child credit, listing the two claimed dependents, with dates of birth listed as June 12, 2004 and August 26, 2016.

4. The Division of Taxation (Division) selected petitioner's return for a desk audit. On February 12, 2019, the Division issued a request for additional information to petitioner. The correspondence requested substantiation of her wages as a housekeeper and for verification of her claimed dependents' relationship to petitioner and their places of residence.

5. On May 1, 2019, the Division sent a letter to petitioner stating that the Division did not receive any documentation to substantiate her wages and that she did not submit birth certificates to establish the relationships between herself and the claimed dependents.

6. On August 30, 2019, the Division issued a notice of disallowance (notice) to petitioner. This notice denied the requested refund in the amount of \$1,950.00 in full.

7. In protest of the notice, petitioner filed a request for conciliation conference with the Bureau of Mediation and Conciliation Services (BCMS).

8. On November 20, 2020, a conciliation default order, CMS No. 316679, was issued to petitioner that granted her a refund in the amount of \$100.00. This refund amount represents the Empire State child credit for the dependent of qualifying age.

9. On December 10, 2020, petitioner filed a timely petition with the Division of Tax Appeals in protest of the conciliation default order.

10. At the hearing, petitioner testified that she was a housekeeper and that she worked for herself. She stated that her customers supplied the cleaning products, and that she did not have any personal expenses related to her job, despite claiming \$600.00 in business expenses on schedule C attached to her 2018 tax return. She stated that she was paid in cash and that all deposits were made into her account at Citibank.

11. A review of the Citibank statements indicated that petitioner's deposits into her account totaled \$24,175.44 (excluding refund amounts deposited from both New York State and the Internal Revenue Service), which amount is much larger than the \$16,005.00 that was reported on her 2018 income tax return. Additionally, the monthly cash deposits varied and did not establish any consistent pattern of income.

### ***CONCLUSIONS OF LAW***

A. Petitioner bears the burden of proof in any case before the Division of Tax Appeals, except where that burden has been specifically allocated to the Division (*see* Tax Law § 689 [e]). The burden of proof is on the taxpayer to show by clear and convincing evidence that the determination made by the Division was erroneous (*see Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]; *see also Matter of Carroll*, Tax Appeals Tribunal, May 18, 2018).

B. Tax Law § 606 (d) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under section 32 of the Internal Revenue Code (IRC). Since the state earned income credit is determined based solely on a percentage of the

federal credit, it is appropriate to refer to the provisions of the IRC to determine petitioner's eligibility for the earned income credit.

C. The federal earned income credit, provided for pursuant to IRC (26 USC) § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer's "earned income," which includes earnings from self-employment (*see* IRC [26 USC] § 32 [c] [2]). Petitioner bears the burden of proof (*see* Tax Law § 689 [e]) to substantiate the amount of earned income reported on her return.

D. The Division denied petitioner's claim for the earned income credit because she failed to substantiate her business income as reported. Petitioner's bank statements reflected a higher deposit amount than she reported on her return and the weekly cash deposits were inconsistent. From a review of the record, it is clear that petitioner has failed to prove her income for the year in issue. Therefore, petitioner has failed to meet her burden of proof to show that the Division's denial of the New York State earned income credit was erroneous (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

E. For purposes of the Empire State child credit, a taxpayer must establish a qualifying child. A qualifying child must be a child of the taxpayer, a descendent of the taxpayer's child, a sibling or step-sibling of the taxpayer or a descendent of such relative; must have the same principal place of abode as the taxpayer for more than one-half of the taxable year, and must be between four and seventeen years of age (Tax Law § 606 [c-1]; IRC [26 USC] §§ 24 [c]; 152 [c]).

As set forth in finding of fact 3, petitioner listed a dependent with a birth date of August 26, 2016. Therefore, during the tax year 2018, such child was not between the ages of four and seventeen and the Division properly denied the Empire State child credit for this dependent.

However, petitioner is entitled to the Empire State child credit for the dependent with a birth date of June 12, 2004.

F. The petition of Mirian Padilla is granted to the extent indicated in conclusion of law E, but is otherwise denied, and a refund in the amount of \$100.00, as modified by the conciliation default order, is sustained.

DATED: Albany, New York  
June 15, 2023

/s/ Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE